APPENDIX "A".

IN THE COURT OF CLAIMS OF THE UNITED STATES.

No. 43641.

(Decided March 3, 1941.)

EDWARD A. BLAIR

v.

THE UNITED STATES.

OPINION.

Per CURIAM:

This is a suit of a reserve officer in the United States Marine Corps to recover rental and subsistence allowances as provided by the Act of January 30, 1929, 45 Stat. 2043.

The findings show that on January 22, 1909, the plaintiff was appointed a second lieutenant in the United States Marine Corps and that on September 11, 1913, a Marine Retiring Board found him incapacitated for active service. On October 22, 1913, the President approved the proceedings and findings of the Board and directed that plaintiff be retired from the service in accordance with the law.

By a special Act of Congress of January 30, 1929, the President was authorized to appoint the plaintiff a second lieutenant in the United States Marine Corps and to retire him and place him upon the retired list of the Marine Corps "with the retired pay and emoluments of that grade."

As we understand the situation, the Comptroller General refused to pay any allowance to plaintiff for the period of his retirement on the theory that the word "emoluments" in the statute did not include allowances to retired officers. The Supreme Court and this Court, however, have decided otherwise. In the case of *McLean* v. *United States,* 226 U. S. 374, 381, the Supreme Court said that the words "all back pay and emoluments" were "all-comprehensive. They embrace all the compensation, perquisites and dues to which

he was entitled as an officer." And again (on page 383) "the word 'emoluments' is the most adequate that could have been used. It especially expresses the perquisites of an office." This Court has followed the rule stated above in *Sherburne* v. *United States*, 16 C. Cls. 491, and *Wilson* v. *United States*, 44 C. Cls. 428, 435.

Plaintiff's petition was filed on August 31, 1937. That portion of his claim which accrued prior to August 31, 1931, is barred by the statute of limitations. Plaintiff has not been paid any rental and subsistence allowances for the period involved and is entitled to recover therefor from August 31, 1931. His claim is a continuing one and judgment will therefore be suspended awaiting a report from the General Accounting Office as to the amount due him in accordance with this opinion.

A true copy.
Test:

—— ——, Chief Clerk, Court of Claims of the United States.